Exhibit 28

Kosuke Imai, PhD   August 8, 2022
The South Carolina State Confvs.McMaster/Alexander

Page 1

1   IN THE UNITED STATES DISTRICT COURT

              FOR THE DISTRICT OF SOUTH CAROLINA

2   COLUMBIA DIVISION

3   THE SOUTH CAROLINA STATE

        CONFERENCE OF THE NAACP,

4   et al.,

5   Plaintiffs,

6   vs.   CASE NO. 3:21-cv-03302-MGL-TJH-RMG

7   THOMAS C. ALEXANDER,

        et al.,

8

9   Defendants.

10

11   DEPOSITION OF: KOSUKE IMAI, PhD (Via VTC)

12   DATE: August 8, 2022

13   TIME: 11:04 a.m.

14   LOCATION: Cambridge, MA

15   TAKEN BY: Counsel for the Senate Defendants

16   REPORTED BY: SOLANGE RUIZ-URIBE, Court Reporter

                              Via Videoteleconference

17   _____

18

19

20

21

22

23

24

25

1   plan and then generating different -- start

2   generating different plans by modifying it.

3   Whereas the SMC is really about

4   starting from a blank slate and start building one

5   district at a time.

6   Q.   Thank you. So I want to start with the

7   third sentence in the abstract of this paper.

8   A.   Okay.

9   Q.   And I'm just going to read that out loud.

10   It says: For successful application sampling

11   methods must scale to large maps with many

12   districts, incorporate realistic legal constraints

13   and accurately and efficiently sample from a

14   selected target distribution. Unfortunately, most

15   existing methods struggle in at least one of these

16   areas.

17   So my first question, Dr. Imai, did I

18   read that correctly?

19   A.   That's correct.

20   Q.   Do you agree that simulation analysis must

21   incorporate realistic legal constraints?

22   A.   I agree.

23   Q.   And the next sentence says that: Most

24   existing methods struggle in at least one of these

25   areas.

Page 67

1   Q.   Do you agree that for simulation plans to

2   be instructive they have to comply with legal

3   requirements for redistricting plans generally?

4   A.   I disagree.

5   Q.   Explain that, please.

6   A.   Simulations can be used in many different

7   purposes. So for example, you could see the impact

8   of, you know, what would happen if you take out one

9   particular requirement. And so depending on the

10   goal of the analysis, a different set of constraints

11   can be imposed.

12   And also, I'm not a lawyer so I don't

13   really make judgment about whether those

14   constraints, how they correspond to the legal

15   requirements. They are informed by legal

16   requirements but I don't make any judgment about the

17   viability in the legal sense. The constraints are

18   mathematical constraints and they are what they are.

19   Nothing more, nothing less.

20   Q.   So is it fair to say, Dr. Imai, that you

21   did not analyze whether any of your simulation plans

22   are legal?

23   A.   I'm not a lawyer so my analysis does not

24   draw any legal conclusions.

25   Q.   Okay. And I just understand the scope of

Kosuke Imai, PhD   August 8, 2022
The South Carolina State Confvs.McMaster/Alexander

Page 68

1   your analysis.

2   A.   Right.

3   Q.   You didn't do anything to try to determine

4   whether your plans were legal, correct?

5   A.   Yeah. No, I didn't do that.

6   Q.   Now, Dr. Imai, I believe your report

7   mentions the South Carolina House and Senate

8   redistricting criteria; is that right?

9   A.   That's correct.

10   Q.   So let's go to tab five of your binder.

11   A.   Okay.

12   Q.   Which is the House Redistricting Criteria.

13   A.   All right. Tab five. Okay. House, yes.

14   Okay.

15   Q.   And I'm going to mark this as Exhibit Six.

16   (Defendant's Exhibit No. 6, SOUTH CAROLINA

17   HOUSE OF REPRESENTATIVES JUDICIARY COMMITTEE

18   REDISTRICTING AD HOC COMMITTEE 2021 GUIDELINES AND

19   CRITERIA FOR CONGRESSIONAL AND LEGISLATIVE

20   REDISTRICTING, was marked for identification.)

21   BY MR. GORE:

22   Q.   And I hope I can figure out how to

23   introduce it. Okay. Dr. Imai, do you recognize

24   this document?

25   A.   Yes.

Page 103

1   additional considerations on the Senate guidelines,

2   letter B is constituent consistency and it lists:

3   Preserving the cores of existing districts.

4   Did the algorithm consider preserving

5   the cores of existing districts in generating plans?

6   A.   So to the extent that, you know, I

7   instructed the algorithm to avoid incumbents pairing

8   and to the extent that my race plan simulations, for

9   example, freezes, you know, all the districts other

10   than Districts 1 and 6 and in the case of second

11   race-blind simulation it freezes everything other

12   than Charleston County.

13   So in that sense, you know, there are

14   constraints that have implications of cores of

15   existing districts, preservation.

16   Q.   Did you --

17   A.   But the analysis I presented in my final

18   report did not directly use, you know, previous --

19   the benchmark plan.

20   Q.   And so your analysis did not include a

21   constraint for preserving the cores of districts,

22   correct?

23   A.   Not directly.

24   Q.   And likewise, it did not include a

25   constraint for keeping incumbents' residences in

Page 104

1   districts with their core constituents, correct?

2   A.   Yeah, incumbents weren't paired but there

3   was no constraint that directly, you know, that

4   needs a definition of what the core constituency of

5   incumbents are. And that information was not

6   available so I did not include that either.

7   Q.   And as we discussed before, the districts

8   in your simulation plans had the same numbers as

9   districts in the enacted plan but may cover

10   different geography; is that right?

11   A.   That's correct, depending on, you know,

12   this will change across analysis and, you know, I

13   have three analyses. So first two analyses are

14   probably much bigger overlap than statewide

15   analysis, for example, but yeah.

16   Q.   So for example, wouldn't that also mean

17   that because the districts encompass different

18   geography they encompass different populations and

19   voters, correct?

20   A.   That's correct, different people in

21   different areas.

22   Q.   And speaking with this page, communities

23   of interest --

24   A.   Uh-huh.

25   Q.   Did you include any constraint for

Page 105

1   communities of interest?

2   A.   So again, only to the extent that, you

3   know, things like administrative boundaries, like

4   counties and municipalities overlap with these

5   interest and to the extent that, you know, incumbent

6   residence wasn't paired, but there is no definition

7   of communities of interest available so I didn't use

8   that.

9   Q.   So there was no direct constraint on

10   communities of interest, correct?

11   A.   That's correct to the extent that --

12   Q.   Okay.

13   A.   Yeah, I don't have, you know, definitions

14   of what these communities are.

15   Q.   And so you didn't assign a strength to

16   communities of interest, correct?

17   A.   Right, because there is no mathematical,

18   you know, geographical definition of communities of

19   interest so I didn't assign that constraint directly

20   to this.

21   Q.   And so you also didn't assign a strength

22   to preserving the course of existing districts,

23   correct?

24   A.   That's correct. For the reason that I

25   explained that in order to isolate the role that

Page 106

1   race played in determining the districts of enacted

2   plan that I didn't want to include any plan

3   including the benchmark plan.

4   Q.   And similarly, you didn't assign a

5   strength to keeping incumbents residences in

6   districts with their core constituents, correct?

7   A.   Right. So the weights are for just the

8   avoidance of incumbent pairing and not with respect

9   to their core constituents because they are not --

10   that definition was not available to me.

11   Q.   Okay. Let's look down at letter E,

12   minimizing divisions of voting precinct boundaries?

13   A.   Uh-huh.

14   Q.   Did you program a constraint in the

15   algorithm for VTD splits or precinct splits?

16   A.   Let's me double check. Yeah, I don't

17   think so. It's no a listed in paragraph 57, which

18   is not -- yeah.

19   Q.   And I don't believe it's listed in

20   paragraphs 20 or 22 either.

21   A.   Yeah, I wanted to double check, yeah. I

22   don't think I imposed that constraint.

23   Q.   So let's go to -- can we go to figure 14

24   on page 27 of your report?

25   A.   Yes.

Page 155

1   Q.   And again, you didn't review any public

2   testimony, comment or legislative testimony about

3   splitting or repairing the split in Charleston

4   County, correct?

5   A.   No.

6   Q.   And did you analyze the political effect

7   of placing all of Charleston County in District 1

8   with Nancy Mace?

9   A.   I did not use any partisan data in my

10   analysis.

11   Q.   And did you analyze what changes to the

12   map would have been required in other parts of the

13   state if all the Charleston was placed in

14   District 1?

15   A.   Can you repeat the question again? Sorry.

16   Q.   Sure. So if you -- Charleston County, if

17   you place Charleston County in District 1?

18   A.   Uh-huh.

19   Q.   In the enacted plan, you would have to

20   make changes to other districts in order to equalize

21   population, correct?

22   A.   That's correct.

23   Q.   All right. And did you do any analysis of

24   that other than to recognize if that's true?

25   A.   Yeah, that's true but I didn't do any

Page 180

1   A.   No, I look at the enacted plan.

2   Q.   Thank you. You answered my next question.

3   So Dr. Imai, you base your simulation

4   constraints on the published South Carolina

5   guidelines for the House and Senate, right?

6   A.   Yeah, I don't know whether they are

7   published but those two guidelines that were given

8   to me.

9   Q.   And in those two guidelines was there any

10   indication, for example, that core preservation

11   should be prioritized over other criteria?

12   A.   No. I believe that it was listed as

13   additional constraint in Senate guideline I think

14   and may not be even directly mentioned in the House

15   guideline or at least it was not priority, listed as

16   a priority.

17   Q.   Thank you. And you testified -- well, why

18   did you choose not to incorporate core preservation,

19   if you can explain again?

20   A.   Right. So the goal of my analysis, the

21   entire report, the goal of the entire report was to

22   examine whether race played a significant role in

23   drawing district boundaries of the enacted plan and,

24   if so, how that happened. And to do that I need to

25   isolate the impact of race, like the role that race

Page 181

1   played from other traditional redistricting criteria

2   and some of the rules in the -- mentioned in the

3   guideline.

4   If I incorporate any product does not

5   have to be benchmark plan, but if I incorporate any

6   plan in my simulation analysis, it will basically

7   carry all the factors that went into that particular

8   plan. So in order to isolate the race as a factor I

9   did not use this through my analysis that I did not

10   use any plan including the previous plan.

11   Q.   Thank you. Now, you recall Mr. Gore asked

12   you some questions about the use of partisanship

13   data in your simulation, right?

14   A.   Yes.

15   Q.   And you explained that you didn't do

16   any -- you didn't use partisanship information; is

17   that right?

18   A.   Right.

19   Q.   And we just covered this, but you read the

20   guidelines, right?

21   A.   Uh-huh, yes, I did.

22   Q.   Did anything in the guidelines suggest to

23   you that your simulation should have accounted for

24   Nancy Mace's election chances, for example?

25   A.   I didn't see any mention of that. Yeah, I

Page 182

1   did not see any specific instruction about use of

2   election outcomes.

3   Q.   Did anything suggest to you that it was

4   important for the map makers to enact a map that

5   favored Republicans?

6   A.   I don't analyze intent of map drawer so I

7   can't, you know, say what they have thought about

8   but the guideline didn't specify, you know, specific

9   use of electoral outcome or electoral chance of

10   politicians and that wasn't, you know, even -- a

11   political consideration wasn't an additional

12   consideration and so I took other more traditional

13   redistricting criteria as priority.

14   MR. CEPEDA: Thank you, Dr. Imai.   I have

15   no more questions.

16   EXAMINATION

17   BY MR. GORE:

18   Q.   I have just a couple of questions of

19   redirect, Dr. Imai.

20   A.   Okay.

21   Q.   Now, you said you haven't attempted to

22   analyze the intent or motives of the map drawer or

23   legislators, correct?

24   A.   That's correct.

25   Q.   And so you don't have an opinion one way

Kosuke Imai, PhD   August 8, 2022
The South Carolina State Confvs.McMaster/Alexander

Page 183

1   or the other as to whether the map drawer or the

2   legislators considered politics even if politics is

3   not in the guidelines, correct?

4   A.   That's right. I don't have any opinion on

5   that.

6   Q.   Do you have a view or opinion on whether

7   the map drawer or the legislators considered Nancy

8   Mace's reelection prospect whether or not that's

9   listed in the guidelines?

10   A.   No, I don't have any opinion on that.

11   Q.   And do you have any opinion or view on

12   whether the map drawer or legislators wanted a plan

13   that would elect six Republicans regardless of

14   whether that's in the guidelines?

15   A.   I don't have any opinion on that.

16   Q.   And Dr. Imai, is keeping Charleston in a

17   single district anywhere in the guidelines?

18   A.   I don't think so, there is no specific

19   counties being mentioned.

20   Q.   How about keeping Richland in a single

21   district?

22   A.   I don't think so.

23   Q.   And how about keeping District 6's BVAP

24   between 45 percent and 50 percent?

25   A.   Those numbers are not specifically